

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE CHARTER OAK FIRE INSURANCE
COMPANY,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE
COMPANY,

Defendant.

CASE NO. 2:21-cv-01344-RAJ-BAT

**ORDER GRANTING STIPULATED
MOTIONS TO BIFURCATE AND
STAY DISCOVERY RELATED TO
THE DUTY TO INDEMNIFY**

The parties have filed a joint Motion to Bifurcate the issues of the duty to defend and the duty to indemnify, and for the filing of cross motions related solely to the duty to defend. Dkt. 37. The parties have also filed a Joint Motion to stay expert and other discovery related to the duty to indemnify. Dkt. 38. The Court grants both motions.

DISCUSSION

On May 12, 2022, the Court ordered this matter stayed pending the resolution of certain Underlying Litigation that is at the heart of the parties' coverage dispute. Dkt 26. The Underlying Litigation settled on June 14, 2022. The stay was lifted on August 31, 2021. Dkt. 28 (Amended Pretrial Scheduling Order). Zurich filed its Answer and Counter Claims on October 21, 2022. Dkt. at 31. Charter Oak filed its Answer and Affirmative Defenses on November 18, 2022. Dkt. 32.

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1 Counsel believe the duty to defend can be resolved on cross motions for summary
2 judgment without the need for expert participation and expense. Counsel also believe the issue of
3 indemnity may become moot, or if not, subject to negotiation and compromise, once the duty to
4 defend issue is decided. The parties have also agreed to file their cross motions for summary
5 judgment on the duty to defend based, to the extent possible, on agreed facts, without the need
6 for expert evaluation and opinion on issues of tort liability. Dkt. 37.

7 Pursuant to Fed. R. Civ. P. 42(b), the Court has discretion to bifurcate a trial after
8 weighing relevant factors such as convenience, avoidance of prejudice, and economy.
9 "Bifurcation is particularly appropriate when resolution of a single claim or issue could be
10 dispositive of the entire case." *Karpenski v. Am. Gen. Life. Co.*, LLC, 916 F. Supp. 2d 1188,
11 1190 (W.D. Wash. 2012), citing *Drennan v. Maryland Casualty Co.*, 366 F.Supp. 2d 1002, 1007
12 (D.Nev. 2005) (citing *O'Malley v. United States Fidelity and Guarantee Co.*, 776 F.2d 494, 501
13 (5th Cir. 1985). The Court also has discretion and authority to grant an extension of time for the
14 filing of pleadings for good cause. *See PLU Investments, LLC v. Intraspex Group Inc.*, 2011
15 U.S. Dist. LEXIS 42020, 2011 WL 1376192 (W.D. Wash. Apr. 12, 2011) (citing *In re Veritas*
16 *Software Corp. Sec. Litig.*, 496 F.3d 962, 974 (9th Cir. 2007)).

17 Here, the Court's determination of the duty to defend will promote judicial economy by
18 enabling the parties to assess their respective indemnity obligations and to perhaps resolve the
19 issue of indemnity entirely, which will avoid additional expense. A determination of the parties'
20 ultimate defense obligations is likely to promote an efficient resolution of this matter overall.
21 Thus, postponing further litigation and discovery regarding the parties' indemnity obligations,
22 which do not bear on the issue of the duty to defend, will promote judicial economy, and
23 conserve the parties' and the Court's resources.

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Accordingly, it is **ORDERED**:

1. The Joint Motion to Bifurcate (Dkt. 37) is **GRANTED**;
2. The briefing schedule for the parties' cross-motions related to the duty to defend is as follows:

April 13, 2023	Cross motions filing deadline
May 8, 2023	Responses due
May 12, 2023	Noting Date

3. The Joint Motion to Stay (Dkt. 38) is **GRANTED**. The rebuttal expert disclosure deadlines and deadlines to complete discovery of other evidence relevant to the duty to indemnify are **STAYED** until this Court determines the duty to defend.

DATED this 20th day of January, 2023.



BRIAN A. TSUCHIDA
United States Magistrate Judge